

IN THE MATTER OF	*	BEFORE THE
ARNE DELOS REYES, P.T.	*	STATE BOARD OF PHYSICAL
LICENSE NO. 22846	*	THERAPY EXAMINERS
RESPONDENT	*	Case Nos. PT- 48
		PT- 49
* * * * *	*	* * * * *

FINAL ORDER

Procedural Background

On November 4, 2009, the Maryland Board of Physical Therapy Examiners (the "Board") summarily suspended the license held by the Respondent, Arne Delos Reyes, P.T., to practice physical therapy in the State of Maryland. The Respondent did not request a hearing on the summary suspension. On December 16, 2010, the Board sent the Respondent a Notice of Intent to Revoke License to Practice Physical Therapy with the opportunity to request a hearing within thirty (30) days. The Board received Mr. Reyes' timely written request for a hearing. On April 15, 2011, the Board held an evidentiary hearing before a quorum of the Board, in accordance with Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.*, and the Board's regulations, COMAR 10.38.05.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

State's Exhibit No. 1 - Virginia licensing information

- State's Exhibit No. 2 - July 25, 2008 Virginia Board of Physical Therapy Notice of Informal Conference
- State's Exhibit No. 3 - September Order – Virginia Board of Physical Therapy issued September 9, 2008
- State's Exhibit No. 4 - June 2, 2008 Commonwealth of Virginia Incident Report (Patient C)
- State's Exhibit No. 5 - September 27, 2006 Application for Physical Therapy License
- State's Exhibit No. 6 - December 20, 2007 correspondence from Board staff to Respondent
- State's Exhibit No. 7 - Copy of Respondent's Individual Taxpayer Identification Number
- State's Exhibit No. 8 - February 27, 2009 correspondence from Board staff to Respondent
- State's Exhibit No. 9 - Respondent's employment record – PT Facility B
- State's Exhibit No. 10 - October 15, 2009 Complaint Form
- State's Exhibit No. 11 - June 23, 2010 Interview transcript .
- State's Exhibit No. 12 - Patient A – patient evaluation form
- State's Exhibit No. 13 - September 29, 2009 Application for Statement of Charges, Statement of Charges, Arrest Warrant- Montgomery County District Court
- State's Exhibit No. 14 - September 19, 2009 memorandum from Montgomery County Police Department Police Service Assistant
- State's Exhibit No. 15 - September 22, 2009 statement by Patient A interpreted into English with attached Spanish statement
- State's Exhibit No. 16 - July 15, 2010 Interview transcript – Patient A
- State's Exhibit No. 17 - October 5, 2009 Fox News article, "Therapist Charged with Sex Assault"
- State's Exhibit No. 18 - October 14, 2009 Montgomery County Police Department Incident – Offense Report for Patient B

- State's Exhibit No. 19 - PT Treatment and Billing Records – Patient B
- State's Exhibit No. 20 - October 8, 2009 Interview transcript – Patient B
- State's Exhibit No. 21 - June 16, 2010 Interview transcript of Respondent with attached diagram
- State's Exhibit No. 22 - Montgomery County District Court Case Summary of Criminal Case No.: 3d00239620
- State's Exhibit No. 23 - November 4, 2008 Order for Summary Suspension of License to Practice Physical Therapy
- State's Exhibit No. 24 - December 16, 2010 Notice of Intent to Revoke License to Practice Physical Therapy with attached unexecuted Order for Revocation of License to Practice Physical Therapy
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- Respondent's Exhibit No. 8 - Respondent' Employment file provided by PT Facility B
- Respondent's Exhibit No. 9 - June 15, 2010 Letter from Virginia Physical Therapy clinic to the Virginia Board of Physical Therapy
- Respondent's Exhibit No. 10 - Letters from The Women's Center
- Respondent's Exhibit No. 11 - Patient Testimonials from Virginia Physical Therapy clinic
- Respondent's Exhibit No. 12 - Photographs of PT Facility B, Rockville Office

B. Witness Testimony

State's Witnesses:

Patient A, with interpreter
Patient B
Ernest W. Bures, Investigator, Board of Physical Therapy Examiners

Respondent's Witnesses:

Arne Delos Reyes, P.T., Respondent

FINDINGS OF FACT

Based upon the documentary and testimonial evidence admitted into the administrative record in this matter, the Board finds the following:

1. On or about February 5, 2007, the Respondent submitted to the Board an "Application for Physical Therapist Licensure" ("Application"). The Respondent did not provide a Social Security number on the Application, noting "None" in the space on the Application requesting the number. (State's Ex. 5)
2. The Respondent answered "NO" to questions on the Application inquiring whether any licensing board or disciplinary body ever investigated him or took any action against his license. (State's Ex. 5)
3. By letter dated December 20, 2007, the Board notified the Respondent that although he met the educational and examination requirements for state licensure as a physical therapist, the Board would not issue a license to him until he provided the Board with a valid Social Security Number or other federally issued identification number. (State's Ex. 6)

VIRGINIA MISCONDUCT

4. On or about February 19, 2008, the Respondent submitted to the Virginia Board of Physical Therapy ("Virginia Board") an Application for Licensure by Examination to Practice Physical Therapy in the Commonwealth of Virginia ("Virginia Application"). (State's Ex. 3)

5. In light of information alleging that the Respondent touched a patient in an inappropriate manner during the course of his employment as a physical therapy trainee/assistant, the Virginia Board convened a Special Conference Committee on August 22, 2008, to review the Virginia Application and to consider whether the Respondent met the requirements for licensure. (State's Ex. 2)
6. The basis of the complaint to the Virginia Board was that the Respondent inappropriately touched a patient ("Patient C") on May 30, 2008, when she presented for physical therapy treatment at PT Facility A. (State's Ex. 3)
7. The Leesburg Police Department incident report regarding the above incident indicates that the Respondent and Patient C hugged and kissed. Later, while Patient C was lying on a treatment table, the Respondent put his hand down Patient C's underwear, inserted his fingers into Patient C's vagina, and then licked his fingers. The Respondent then placed Patient C's hand on his erect penis and said "do you want some of that"? (State's Ex. 4)
8. Patient C reported that later on the day of the incident, a man fitting the Respondent's description stopped by her home to see if she was there. She also reported that he left her several phone messages. (States' Ex. 4)
9. On June 3, 2008, with Patient C's consent, the Leesburg police recorded a telephone conversation between the Respondent and Patient C. During the conversation, the Respondent acknowledged that he inserted his finger into Patient C's vagina and put her hand on his penis. The Respondent told Patient C that he had been carried away by emotion and thought she had been as well. (State's Ex. 4)

10. On June 3, 2008, the Leesburg police interviewed the Respondent. The Respondent initially admitted that he had inserted his finger into Patient C's vagina, but later stated that he was not sure whether he had. The Respondent further admitted that he had placed Patient C's hand on his erect penis. The Respondent stated that he thought Patient C "was cool with it." The Respondent acknowledged that his actions were wrong because both he and Patient C were married and because of his role as her physical therapist.¹ (State's Ex. 4)
11. The Respondent testified at the hearing about his interaction with Patient C and admitted to hugging, kissing, fondling, "holding of the vagina" and "letting her hold my penis, also". (T. 108-9)
12. On September 9, 2008, the Virginia Board issued an Order regarding the Virginia Application ("Virginia Order"), which reads, in pertinent part:

[The Respondent] violated §§ 54.1-3480(3) and 54.1-3483(4), (7) and (10) of the Code in that during the course of employment as a trainee/assistant at [PT Facility A], Leesburg, Virginia, on May 30, 2008, he touched a patient in an inappropriate sexual manner. As a result, he was terminated from his employment.

(State's Ex. 3)
13. The Virginia Order further stated that the Respondent "is undergoing individual psychotherapy and is committed to continuing his therapy. . . . [The Respondent] expressed deep remorse for his actions and stated that he is committed to respecting boundary issues." (State's Ex. 3)
14. In the Virginia Order, the Virginia Board granted the Respondent a license subject to terms and conditions that include the following:

- The Respondent was placed on probation for 3 years;

¹ The Assistant Commonwealth Attorney declined to prosecute the case.

- The Respondent was required to remain under the care of his counselor;
- The Respondent was required to, "inform his current physical therapy employer and each future physical therapy employer that the Board has placed him on probation and shall provide each employer with a complete copy of [the Virginia] Order."

(State's Ex. 3)

15. Accordingly, on December 12, 2008, the Virginia Board issued probationary license to the Respondent but placed the license on immediate probation for three (3) years. (State's Exs. 1 and 3)
16. On December 17, 2008, five (5) days after the Respondent was issued his Virginia license and after five (5) months of therapy, the Respondent's counselor found that the Respondent appeared to have met his therapeutic goals and therefore discharged him from therapy, especially since the Respondent "will be overseas." (Resp. Ex. 10) The Respondent did not go overseas. (State's Ex. 21, p. 40)

MARYLAND MISCONDUCT

17. On February 15, 2009, after the issuance of the Virginia Order, the Respondent was issued an Individual Taxpayer Identification Number ("ITIN") by the Internal Revenue Service. (State's Ex. 7) The Respondent provided the ITIN number to the Board to re-initiate the licensure application process in Maryland. The Respondent also provided the Board with updated information regarding his address, telephone number, and email address. (State's Ex. 5)
18. The Respondent did not further update the Application by informing the Board that the Virginia Board investigated him and placed his Virginia license on

probation. (State's Ex. 21, p. 43) The Respondent later testified that he did not inform the Board about the Virginia Board's disciplinary action because he was "so excited" to have a license that was not on probation. (T. 152)

19. On February 27, 2009, the Board issued the Respondent a license to practice physical therapy in Maryland based on the updated Application. (State's Ex. 8)
20. In May 2009, the Respondent was hired as a physical therapist by PT Facility B. Facility B has offices in Rockville and Gaithersburg, Maryland. (Resp.'s Ex. 8; State's Ex. 11, pp. 4-6)
21. On October 19, 2009, the Board received a written complaint from the owner of Facility B. The owner indicated that the Respondent had failed to provide him with a copy of the Virginia Order, as he was required to do pursuant to the Virginia Order.² (State's Ex. 10)
22. The Respondent later testified that he failed to disclose the Virginia Order to Facility B despite the Virginia Order's specific requirement that he do so because he was not asked by that employer if he had any disciplinary action against him and because he thought the Virginia Order only applied in Virginia. (T. 115-16)

A. Patient A³

23. On September 18, 2009, the Board was notified by the Montgomery County Police Department ("MCPD") that the Respondent had allegedly inappropriately touched a female patient, Patient A, during the course of treatment at Facility B's Rockville office. (T. 64; State's Ex. 13)

² The Respondent was subsequently terminated by Facility B. (State's Ex. 11, p. 6)

³ Patient names are confidential. The Respondent was provided the identification of the patients through discovery.

24. Patient A accompanied her elderly mother-in-law to Facility B for the latter's physical therapy appointment with the Respondent on September 16, 2009. This was the mother-in-law's second appointment with the Respondent. The Respondent engaged Patient A in conversation, during which Patient A told the Respondent that she had been having lower back pain. The Respondent told Patient A that he would be happy to give her a free consultation. (State's Ex. 13; T. 14-15)
25. In the treatment room, the Respondent instructed Patient A to unbutton her pants, and he performed a trigger point therapy procedure involving deep palpitations of the iliopsoas muscle in the pelvic region. This is a clinically appropriate procedure to assess lower back pain. (State's Exs. 12, 16; T. 17-18, 29, 32)
26. The Respondent did not inform Patient A regarding this assessment procedure in a manner that she understood and appreciated. Patient A's primary language is Spanish, but the Respondent was conversing with her in English. Patient A understood English sufficiently to know that the Respondent was not advising her about any of the procedures he was performing on her. (T. 19, 25, 30)
27. There was no clinical documentation of any communications between the Respondent and Patient A, nor any written informed consent from Patient A. (State's Ex. 12; T. 31) In addition, during the Respondent's investigative interview with the Board's investigator, the Respondent did not mention that he had any communications with Patient A regarding his assessment procedures,

although he mentioned other types of communications he had with Patient A.
(State's Ex. 21)

28. Patient A was very upset after the Respondent's treatment and called her husband and friends, who advised her to call the police. (T. 19-20)
29. Based upon Patient A's subsequent complaint to the police, MCPD obtained an arrest warrant charging the Respondent with second degree assault and a fourth degree sex offense. (Criminal Case 3D00239620). (State's Ex. 13) The Respondent was arrested and MCPD issued a media release regarding the incident. (State's Ex. 17) The Montgomery County State's Attorney's Office dismissed the charges against the Respondent in this matter. (State's Ex. 22)

B. Patient B

30. In October 2009, Patient B, a social worker, contacted MCPD after seeing a television report concerning the Respondent's arrest. The news story included the Respondent's name and photograph, which Patient B immediately recognized. The news story solicited response from any other patients who thought they were inappropriately touched by the Respondent. (State's Ex. 18, T. 40)
31. Patient B reported to MCPD that in early 2009, she had sought physical therapy treatment for running-related injuries to her knee and lower back. She was treated at Facility B's Gaithersburg office. (State's Ex. 18, 20; T. 33-34)
32. From June 2009 until August 24, 2009, the Respondent treated Patient B on 15 occasions. Patient B's appointments were typically scheduled at 7:30 a.m., when

very few people were in the office due to the early hour. (State's Ex. 18, 19; T. 36, 49)

33. The Respondent requested that Patient B wear shorts during her appointments. On several occasions, the Respondent slid his hands under Patient B's shorts and underwear and massaged her buttocks without clinical justification. The Respondent concealed his actions by covering the area he was massaging with a towel. (State's Ex. 20, p. 19; T. 37, 49)
34. On one occasion, the Respondent massaged Patient B's front in the area between her thighs and hip joint. The Respondent slid his hands under Patient B's underwear, ultimately making direct contact with her vagina. This was also done without clinical justification. Again, the Respondent concealed his actions by covering the area with a towel. (State's Ex. 20, p. 29; T. 38, 49)
35. Patient B did not consent to the Respondent touching her in this manner.
36. The Respondent did not explain or justify his inappropriate touching except to state, "I'm sorry. I know this is uncomfortable." (T. 37)
37. Patient B was also treated by two other physical therapists at the Facility B practice. The other physical therapists performed some similar procedures as performed by the Respondent, however neither of the other physical therapists "went near [her] genitals". (T. 45)
38. At the time, Patient B rationalized the Respondent's misconduct, figuring that the Respondent would not attempt anything deviant with her in the open treatment area. Patient B deferred to the Respondent as the healthcare professional with expertise in physical therapy. (State's Ex. 20, p. 16-17; T. 39, 47)

39. It was only when Patient B saw the news story regarding Respondent's arrest that she appreciated the Respondent's misconduct. (T. 40)
40. On October 14, 2009, the District Court of Montgomery County issued a warrant for the Respondent's arrest based on Patient B's complaint. (Criminal Case 6D00240036). The Montgomery County State's Attorney's office entered a *nolle prosequi* against the Respondent in the case. (State's Ex. 22)

OPINION

As the facts found above show, the Respondent engaged in a flurry of misconduct over a two-year period after moving to the United States from the Philippines. Such continued misconduct warrants the Board's most stringent sanction of revocation.

From the Board's perspective, the most egregious violation is that the Respondent intentionally concealed the disciplinary actions taken against him by the Virginia Board, both from this Board and, in direct violation of the Virginia Order, from his physical therapy employer. The Virginia Order concerned the Respondent's admitted sexual misconduct with a patient in the physical therapy clinic while he was a physical therapist trainee/assistant. The Respondent's failure to provide his Maryland employer with a copy of the Virginia Order thwarted the employer's ability to make an informed decision whether, and in what capacity, the Respondent was qualified to safely render physical therapy, especially to female patients. Although the Respondent's failure to disclose the Virginia Order to his Maryland employer was a direct violation of the Virginia Order, the Respondent rationalized his deceit, testifying:

I really need that job, and also, I don't want to lose that opportunity to pass by me. I waited for a long time to get that sponsor. And, second, you know, I have a different physical therapy license that I showed to [Facility B]. I showed him my – my Maryland physical therapy license, which is not encumbered. So, he's – feel free to, you know, he's a grown man. He can ask me anything, you know. If he asked me, I would tell him, but, you know, he didn't ask me.

(T. 158) The Respondent also actively misled his employer regarding the status of his Virginia license. When his employer asked the Respondent why he could not get a sponsor for his work visa in Virginia, the Respondent told him “it was very hard” to find a sponsor in Virginia. The Respondent neglected to mention was that it was “hard” to find a sponsor in Virginia because his Virginia license was on probation. (T. 114, 116)⁴

The Respondent's additional excuse that he did not believe he had to disclose his Virginia Order to his employer in Maryland has no merit. The terms of the Virginia Order are clear and unambiguous – “Mr. Delos Reyes shall inform his current physical therapy employer *and each future physical therapy employer* that the Board has placed him on probation *and shall provide each employer* with a complete copy of this Order.” (emphasis added)(States' Ex. 3) The Respondent made the deliberate decision to withhold information from Facility B because he did not want to risk losing the job opportunity or the sponsorship for his work visa.

Furthermore, the information concealed by the Respondent was of obvious importance to the Board in determining the appropriate licensing action, in light of the Board's mandate to protect the public. If the Respondent disclosed the Virginia Order to the Board, as he was required to do, the Board would have undoubtedly taken formal

⁴ The Respondent had worked as a trainee at another facility in Virginia prior to working at Facility B. The Respondent was unable to get this facility to sponsor him for his work visa due to his probationary status. (T. 114)

disciplinary action against him. Whether that action would have resulted in a revocation is impossible to say, especially given the transgressions that have occurred in the interim. Suffice it to say, however, that the withholding of such vital and relevant information by the Respondent, with the express purpose of avoiding further action by the Board, is, *in and of itself*, sufficient to warrant revocation of the Respondent's license.

Physical therapists are trained to provide care and rehabilitation to individuals who are suffering from painful and sometimes debilitating physical injuries or impairments. The public must be able to trust that a physical therapist will be not only competent, but ethical in the provision of physical therapy services. Physical therapy is a "touching profession" and often involves palpating sensitive areas of the body. That a physical therapist would take advantage of this opportunity to satisfy personal sexual desires is beyond the pale.

The Respondent grossly violated the public's trust by touching Patient B in a sexual manner under the guise of treatment. Patient B was entirely credible in her explanation of events. Her testimony was clear and consistent, and her demeanor was calm and focused. The Board did not find that her delay in reporting the incidents undermined her credibility. It is understandable that Patient B would dismiss any misgivings she had about the Respondent's touching by deferring to his expertise as the healthcare professional. Patient B testified that she ultimately reported the incident because she saw a television news program asking patients of the Respondent to come forward with information about inappropriate conduct. She lacked any other motivation to report her incident and subject herself to the time, expense, and scrutiny inherent in

the criminal, and now administrative, enforcement processes. She appeared embarrassed or ashamed that she did not immediately recognize the inappropriateness of the Respondent's actions. The Respondent, on the other hand, has great motivation to deny any misconduct with Patient B – his Maryland, and possibly his Virginia, physical therapist license are at stake. Furthermore, the Respondent has already shown that he will mislead and withhold salient information if he feels it is in his best interests.

Although the Board did not find, by a preponderance of evidence, that the Respondent engaged in sexual misconduct with Patient A, the Board found that Patient A was very credible in her testimony regarding the Respondent's "touching and squeezing" of her "ovaries".⁵ It was clear that Patient A was completely unaware of the procedure the Respondent was performing. Because the procedure requires strong palpation in the pelvic region, and, if necessary, the removal of clothing, it was incumbent upon the Respondent to provide Patient A with a comprehensive explanation prior to engaging in the procedure. Patient A testified that the Respondent gave her no explanation of any procedure and that she knew enough English to recognize whether he was attempting to discuss the procedure with her. In addition, the Respondent's documentation of his assessment of Patient A is extremely limited and does not indicate any discussion with Patient A, or any difficulty the Respondent had in communicating with her. The Respondent justified the limited documentation by stating that his assessment of Patient A was a free consultation. Nevertheless, the Physical Therapy Act applies the same standards to the practice of physical therapy regardless of the

⁵ Although Patient A's prior recitation of events contained some factual discrepancies regarding the treatment room, and whether the Respondent touched her vaginal area, she remained consistent in her explanation of his touching of her hip/pelvic region.

context or setting. There is no excuse for violating those standards just because the Respondent was merely doing a free consultation. Patient A deserved to be informed about the procedure to assess her lower back pain in a manner that she understood, and she deserved the opportunity to consent to the procedure. The Respondent failed to provide Patient A with these opportunities, thereby causing her considerable distress and anxiety.

The Board believes that the Respondent, through his actions, has forfeited his right to practice physical therapy in Maryland. The Respondent has only been engaged in the practice of physical therapy since 2008; yet by November 2009, he had already received three complaints from three separate women in two states. Although Respondent claims that he is remorseful for his actions, the Board does not find him credible. The Respondent claimed he was remorseful to the Virginia Board, yet immediately jumped state lines into Maryland, concealed the Virginia Order, and committed further offenses against Maryland patients. Through this Order, the Board attempts to redress the irreparable harm caused by the Respondent to the victims, the public, and the physical therapy profession.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and opinion, the Board concludes that the Respondent is subject to discipline pursuant to Health Occupations Article §§ 13-316(15), (19), and (25). The Board also concludes that the Respondent is subject to discipline pursuant to COMAR 10.38.02.01B and H, and 10.38.02.02A, B(1), B(2) and B(5). The Board concludes that there is insufficient evidence to support certain other

charges and thus dismisses the charges under Health Occupations Article §§ 13-316(4) and (12), and COMAR 10.38.03.02-1.

ORDER

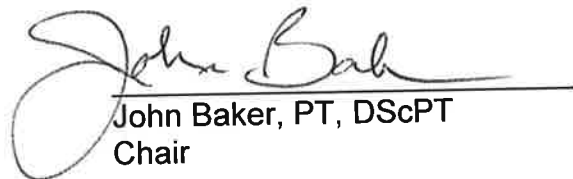
Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, by a unanimous decision of a quorum of the Board it is hereby:

ORDERED that the summary suspension of the Respondent' license is superceded by the Board's action below; and be it further,

ORDERED that the Respondent's license to practice physical therapy be **REVOKED**; and be it further,

ORDERED that this is a final order of the Maryland Board of Physical Therapy Examiners and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

09/12/2011
Date


John Baker, PT, DScPT
Chair